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1ST CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) DEFENDANTS HONOLULU ETHICS COMMISSION AND CITY AND COUNTY OF HONOLULU'S MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STRIKE; MEMORANDUM IN SUPPORT OF MOTIONS; NOTICE OF HEARING; CERTIFICATE OF SERVICE Hearing Date: August 3, 2016 Time: 3:00 pm Judge: Honorable Gary W. B. Chang Trial Date: None.

2016 JUL 11 P 12:53
FIRST JUDICIAL CIRCUIT
STATE OF HAWAII
14TH DIVISION

DEFENDANTS HONOLULU ETHICS COMMISSION
AND CITY AND COUNTY OF HONOLULU'S
MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO STRIKE

Defendants Honolulu Ethics Commission and City and County of Honolulu ("City Defendants") move for a more definite statement and to strike regarding the Verified Complaint for Damages, Declaratory and Injunctive Relief ("Complaint"), filed on June 17, 2016.

Pursuant to Rule 12(e) of the Hawai'i Rules of Civil Procedure (HRCP), City Defendants seek a more definite statement because the Complaint, despite its inflammatory language, length, and prolixity, does not clearly identify any claims against the City Defendants (nor against any other Defendant), and is so vague and ambiguous as to preclude City Defendants from formulating any reasonable response. By failing to provide such information, the Complaint does not comply with the mandate in HRCP Rule 8(a) that a complaint shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief."

The City Defendants are therefore entitled to an order directing Plaintiffs to provide a more definite statement identifying the specific claims against each named Defendant, including allegations regarding the elements of those claims, and such further information as required by the Court.

Pursuant to HRCP Rule 12(e), City Defendants also seek to strike Plaintiffs' redundant, immaterial, impertinent, and scandalous matters from the Complaint and the nearly thousand pages of exhibits attached thereto.

This motion is supported by the enclosed memorandum of law, the record herein, and such additional matters the Court may entertain, including oral argument, at the time of the hearing on this motion.

DATED: Honolulu, Hawai'i, July 11, 2016.

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) MEMORANDUM IN SUPPORT OF MOTIONS

MEMORANDUM IN SUPPORT OF MOTIONS

INTRODUCTION

The City Defendants[1] move for a more definite statement of the claims against them because the Complaint,[2] despite its inflammatory language ("terrorize," "whitewash," "favoritism,", "patronage, "abusive"), length, and

[1] Defendants Honolulu Ethics Commission and City and County of Honolulu.

[2] Verified Complaint for Damages, Declaratory and Injunctive Relief, filed on June 17, 2016.

prolixity, does not clearly identify any claims against the City Defendants (nor against any other Defendant), and is so vague and ambiguous as to preclude City Defendants from formulating any reasonable response.

For example, while the Complaint is entitled "Verified Complaint for Damages, Declaratory and Injunctive Relief," it fails to articulate what declaratory and injunctive relief the Plaintiffs seek.

By failing to provide such information, the Complaint does not comply with the mandate in Rule 8(a) of the Hawai'i Rules of Civil Procedure (HRCP) that a complaint shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." City Defendants are therefore entitled to an order directing Plaintiffs to provide a more definite statement identifying the specific claims against each named Defendant, including allegations regarding the elements of those claims, and such further information as required by the Court.

City Defendants also seek to strike Plaintiffs' redundant, immaterial, impertinent, and scandalous matters from the Complaint and the nearly thousand pages of exhibits attached thereto. Plaintiffs have improperly appended evidentiary materials to their Complaint, which are prejudicial both to Defendants and to individuals not named as parties in this lawsuit.

THE COMPLAINT

The Complaint contains 131 numbered paragraphs[3] and is 44 pages long, including a "Verification" by Plaintiff Katherine Kealoha stating that the contents of the Complaint and attached exhibits are "true and correct" but not stating that she has personal knowledge of any matter.

The Complaint lists 76 exhibits, though some of those exhibits are missing. The exhibits are nearly a thousand pages long (Bates nos. KCOM 1–991).[4]

The Complaint contains no list of counts, no clearly identified claims against the City Defendants, and in fact no clearly stated claim against any Defendant showing that any pleader is entitled to relief.

LEGAL STANDARDS

A. HRCP Rule 8(a) – General rules of pleading.

HRCP Rule 8(a)(1) requires a pleading to contain "a short and plain statement of the claim showing that the pleader is entitled to relief," which "provides defendant with fair notice of what the plaintiff's claim is and the grounds upon which the claim rests."[5]

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[3] The Complaint misnumbers the three paragraphs after paragraph 129 as 108, 109, and 110.

[4] The copy of the exhibits provided to City Defendants contained no numbered tabs nor a Bates-numbered list of exhibits indicating where each one begins, making it difficult to locate the more than 70 documents cited at the end of the numerous paragraphs in the Complaint.

B. HRCP Rule 12(e) – Motion for more definite statement.

HRCP Rule 12(e) permits a party to move for a more definite statement of a pleading that is "so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." It is within the court's discretion whether to grant the motion, and the court may dismiss the complaint if the order is violated.[6]

Although Rule 12(e) motions are generally disfavored, they are appropriate when a pleading does not satisfy the requirement of Rule 8(a) that a pleading contain allegations as to each element of a claim.[7]

In addition, in "cases involving public officials who may be entitled to qualified immunity, the court is more likely to grant a Rule 12(e) motion."[8]

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[5] *Childs v. Harada*, 130 Hawai'i 387, 404 (App. 2013), quoting *In re Genesys Data Technologies, Inc.*, 95 Hawai'i 33, 41 (2001).

[6] *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) ("[T]he judge may in his discretion, in response to a motion for more definite statement under Federal Rule of Civil Procedure 12(e), require such detail as may be appropriate in the particular case, and may dismiss the complaint if his order is violated.") When a Hawai'i rule of civil procedure is patterned after an equivalent federal rule, interpretations by the federal courts are considered highly persuasive. *Gap v. Puna Geothermal Venture*, 106 Hawai'i 325, 341 (2004) (citation omitted).

[7] *Gorthy v. Clovis Unified Sch. Dist.*, No. CVF05-1052RECJLO, 2006 WL 236939, at *6 (E.D. Cal. Jan. 31, 2006), quoting 2 Moore's FEDERAL PRACTICE, § 12.36[1] (3d ed.).

[8] *Sneller v. City of Bainbridge Island*, No. C07-5338RBL, 2007 WL 4562882, at *2 (W.D. Wash. Dec. 21, 2007).

"Qualified immunity is the right to be immune from suit."[9] This issue of whether a party is entitled to qualified immunity must be resolved early in the case to preserve this right.[10] It is incumbent upon a court to exercise its discretion so that officials who may be entitled to qualified immunity are not subjected to unnecessary and burdensome discovery.[11]

C. HRCP Rule 12(f) – Motion to strike.

HRCP Rule 12(f) provides that "[t]he court may order stricken from any pleading … any redundant, immaterial, impertinent, or scandalous matter." "A motion to strike must be made before responding to the challenged pleading."[12] A court has considerable discretion in ruling on a motion to strike.[13]

The rule is also "designed to reinforce the requirement in Rule 8(e) that pleadings be simple, concise, and direct."[14] A court may consider the fact that "[i]t would take significant judicial resources for the court to sift through the

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[9] *Id.*, citing *Mitchell v. Forsyth,* 472 U.S. 511, 526 (1985).

[10] *Id.*, citing *Mitchell.*

[11] *Id.*, citing *Crawford-El v. Britton,* 523 U.S. 574, 597–98 (1998); *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982) (discovery should not be allowed until the threshold immunity question is resolved).

[12] Wright, Miller, Kane & Spencer, 10B FEDERAL PRACTICE AND PROCEDURE § 1380.

[13] *Id.*, § 1382 ("The district court possesses considerable discretion in disposing of a Rule 12(f) motion to strike redundant, impertinent, immaterial, or scandalous matter.").

[14] *Id.*, § 1380.

[complaint] (and its voluminous exhibits) to determine which allegations are relevant to the claims.[15]

While motions to strike are generally disfavored, if they serve to remove unnecessary clutter from a case, they actually expedite the litigation rather than delay it.[16] "[S]ince pleading evidence is not favored under the ... rules because it violates the principle of simplicity of statement, evidentiary allegations may be stricken, particularly if the excessive narrative is lengthy, or if the details are inadmissible or prejudicial."[17]

Exhibits that are redundant, immaterial, and only serve to inflame the passions may be stricken because they are immaterial at the pleading stage.[18] A court even has "discretion to *dismiss* a claim due to a party's excessive attachment of unnecessary exhibits."[19]

D. HRS Chapter 632 – Declaratory Judgments.

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[15] See *Beavers-Gabriel v. Medtronic, Inc.*, No. CIV. 13-00686 JMS, 2014 WL 4723802, at *2 (D. Haw. Sept. 22, 2014).

[16] *Miller v. City of Harvey*, No. 13 C 9257, 2014 WL 3509760, at *5 (N.D. Ill. July 15, 2014), citing *Heller Fin., Inc. v. Midwhey Powder Co.,* 883 F.2d 1286, 1294 (7th Cir. 1989).

[17] *Id.*, 2014 WL 3509760, at *5.

[18] *Id.*

[19] *WebQuest.com, Inc. v. Hayward Industries, Inc.*, 2010 WL 4630230, *2 (E.D. Cal. 2010) (italics added), citing *Hatch v. Reliance Ins. Co.,* 758 F.2d 409, 415 (9th Cir.1985) (noting that district court did not abuse discretion in dismissing complaint that included over 70 pages of exhibits).

The declaratory judgment statute grants a court the power, "[i]n cases of actual controversy," to make "binding adjudications of right" only if the court is "satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding." HRS § 632-1.

E. HRCP Rule 65 – Injunctions.

The form and scope of injunctions is set out in HRCP Rule 65(d), which provides:

> [e]very order granting an injunction ... shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail ... the act or acts sought to be restrained .... (HRCP 65(d)).

ARGUMENT

I. The City Defendants Are Entitled to a More Definite Statement of the Complaint Because It Is Vague, Ambiguous, Prolix, Confusing, and Fails to Clearly Identify Any Claims Against the City Defendants.

Plaintiffs' Complaint, despite its length and incendiary language, fails to clearly identify any claims against the City Defendants (or any other Defendant), rendering it impossible to prepare a response. While pleading standards are generally liberal, there can be enormous burdens and unfairness when a complaint grossly violates basic principles of pleading.

Praising a succinct federal form pleading for negligence, the Ninth Circuit (whose interpretations are considered "highly persuasive"[20]), noted that it "fully sets forth who is being sued, for what relief, and on what theory, with enough detail to guide discovery. It can be read in seconds and answered in minutes."[21] The court contrasted that with the complaint it was reviewing, stating that it was "argumentative, prolix, replete with redundancy, and largely irrelevant."[22]

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[20] *Gap*, 106 Hawai'i at 341.

The Ninth Circuit noted that "[p]rolix, confusing complaints ... impose unfair burdens on litigants and judges,"[23] and elaborated on these burdens:

> As a practical matter, the judge and opposing counsel, in order to perform their responsibilities, cannot use a complaint such as the one plaintiffs filed, and must prepare outlines to determine who is being sued for what. Defendants are then put at risk that their outline differs from the judge's, that plaintiffs will surprise them with something new at trial which they reasonably did not understand to be in the case at all, and that res judicata effects of settlement or judgment will be different from what they reasonably expected. "[T]he rights of the defendants to be free from costly and harassing litigation must be considered."[24]

Such is the case here. The City Defendants intend to file a motion to dismiss the Complaint but cannot discern the universe of the claims against them. Without a more definite statement, there is a considerable risk that Plaintiffs will oppose the motion to dismiss by arguing that certain vague allegations constitute claims that are not clearly identified as claims in the motion to dismiss. The City Defendants and the Court should not have to perform such detective work. Some of the particular deficiencies are discussed in detail below.

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[21] *McHenry*, 84 F.3d at 1177.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 1179–80 (citation omitted).

A. Declaratory Relief

The Complaint is captioned one for "Damages, Declaratory and Injunctive Relief."

The declaratory judgment statute grants a court the power to make "binding adjudications of right" only if there is an "actual controversy" and the court is "satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding." HRS § 632-1.

Plaintiffs make no allegations in support of their claim for declaratory relief, even though the "rules of good pleading are as important in a suit for a declaratory judgment as in any other civil action."[25]

Apart from the caption, the only mention of declaratory relief is in paragraph D of the prayer for relief, which contains this vague, overbroad, and totally inappropriate prayer for declaratory relief:

> D. For Declaratory relief, determining that the process and procedures of the Ethics Commission in instigating investigations and prosecuting violations of the Standards of Conduct are in violation of the law, and to determine the proper procedures as described in the applicable statutes and rules[.] (Complaint, p. 43.)

The "violation" mentioned in paragraph D of the prayer does not allege that an "actual controversy" exists and only references "the process and procedures of the Ethics Commission," which is so vague and overbroad that neither the Defendants nor the Court can possibly know as to which "process and procedures" Plaintiffs are seeking a declaration. Furthermore, "Standards of Conduct" is a vague phrase used 15 times in the Complaint, without citing the specific standard at issue.

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[25] C. Wright, A. Miller & M. Kane, 10B FEDERAL PRACTICE AND PROCEDURE § 2768 (3d ed.).

"Before a court may grant declaratory relief based on a … violation, the violation must be set forth with specificity; broad, vague and ill-defined allegations … are insufficient."[26]

Finally, asking this Court to issue a declaratory judgment "to determine the proper procedures as described in the applicable statutes and rules" far exceeds the Court's statutory authority to make "binding adjudications of right." In effect, the Plaintiffs are inviting the Court to override the authority of the Ethics Commission to determine its own procedures, and to become embroiled in an ongoing supervisory role of this City department.

B. Injunctive Relief

There are also no allegations in the Complaint as to injunctive relief, which is again only addressed in the title of the Complaint and the prayer for relief:

E. For injunctive relief, requiring the Ethics Commission and

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[26] *Heimbaugh v. City & County of San Francisco*, 923 F.2d 862, at *4 (9th Cir. 1991).

> defendants to comply with the law and the required procedures for instituting investigations and prosecuting violations of the Standards of Conduct[.] (Complaint, p. 43.)

This language is no less vague than the prayer for declaratory relief, and thus the allegation fails to satisfy the standards of specificity imposed by the law of injunctions,[27] expressly requiring that

> [e]very order granting an injunction ... shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail ... the act or acts sought to be restrained .... (HRCP 65(d)).

C. Defamation

The Complaint repeats the word "defamatory" six times.[28] Is this a claim for defamation? One can only guess, as there is no count entitled "defamation" or "libel" or "slander." Plaintiffs' allegations fail to satisfy even the generous notice pleading requirements under Rule 8(a). They have failed to identify the alleged defamatory statements and the time and circumstances when those statements were made. Plaintiffs should be ordered to provide this information in the Complaint, as other courts have ordered with similarly deficient pleadings of defamation.[29]

"A complaint is insufficient when it does not allege either the specific words or the substance of statements alleged to be defamatory."[30] The reason is that "[t]he defining feature of a defamation claim is a statement of fact that is provably false," and because "rhetorical hyperbole, vigorous epithet[s], lusty and imaginative expression[s] of...contempt, and language used in a loose, figurative sense have all been accorded constitutional protection."[31] A California court has noted:

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[27] See *Cognitest Corp. v. Riverside Pub. Co.*, No. 94 C 4741, 1994 WL 727980, at *4 (N.D. Ill. Dec. 30, 1994), aff'd, 107 F.3d 493 (7th Cir. 1997).

[28] Complaint, ¶¶ 80, 84(a), 99(a), 99(c), 128 (2).

[29] See, e.g., *Hall v. Whitacre*, No. 06-1240, 2007 WL 1585960 at *3 (D. Kan. May 31, 2007) (granting a motion for a more definite statement to identify the substance

> It is sometimes said to be a requirement, and it certainly is the common practice, to plead the exact words or the picture or other defamatory matter. The chief reason appears to be that the court must determine, as a question of law, whether the defamatory matter is on its face or capable of the defamatory meaning attributed to it by the innuendo. Hence, the complaint should set the matter out verbatim, either in the body or as an attached exhibit.[32]

In short, if Plaintiffs are indeed asserting a claim for defamation, they should be ordered to provide a more definite statement of the claim consistent with the above authorities.

D. Violations of "Standards of Conduct"

The Complaint alleges knowing violations of the "Standards of Conduct." (¶

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of the alleged slanders and when the statements occurred); *PAI Corp. v. Integrated Sci. Solutions, Inc.*, No. C-06-5349, 2007 WL 1229329 at *9 (N.D. Cal. Apr. 25, 2007) (ordering a more definite statement when defendants have failed to identify "when they were made and to whom they were made.").

[30] *Morse v. County of Merced*, No. 116CV00142DADSKO, 2016 WL 3254034, at *9 (E.D. Cal. June 13, 2016) (internal quotation marks and citation omitted).

[31] *Id.* (internal quotation marks and citations omitted).

[32] *Id.* (citation omitted).

50). It is unclear whether this is a claim and the "standards of conduct" to which they refer. If so, Plaintiffs should provide a more definite statement of it.

Plaintiffs also allege in paragraph 108 that Plaintiff Katherine Kealoha and others have filed eight complaints with the Ethics Commission regarding some or all of the alleged violations contained in other paragraphs of the Complaint. Plaintiffs should be ordered to clarify whether they are asking the Court to assert concurrent jurisdiction over those complaints before the Ethics Commission and whether those complaints are currently before or have been decided by the Ethics Commission, or whether the Complaint is making a different claim regarding the "standards of conduct."

II. The Court Should Strike the Redundant, Immaterial, Impertinent, and Scandalous Matters From the Complaint and the Nearly Thousand Pages of Exhibits.

A court has considerable discretion to strike "redundant, immaterial, impertinent, or scandalous matter."[33]

A. Certain allegations in the Complaint should be stricken.

According to its rules of procedure,[34] the records of the Ethics Commission are kept confidential (with certain limited exceptions).[35] By filing this Complaint and placing Ethics Commission matters relating to third parties in the public record, they violate the confidentiality of those persons who are not parties to this lawsuit.

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[33] HRCP Rule 12(e); Wright, Miller, Kane & Spencer, *supra*, § 1382.

[34] The City Defendants request that the Court take judicial notice of the Ethics Commission's Rules of Procedure. "Courts may take judicial notice of the rules and regulations of an administrative agency…." 60 AM. JUR. PROOF OF FACTS 3d 175 (2001). The Court may take judicial notice of facts that are both "generally known" within this Court's jurisdiction and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be

Allegations regarding third parties[36] are immaterial, impertinent, and scandalous because they are not named defendants. They should therefore be stricken so they do not create "unnecessary notoriety" by becoming public documents and hence "generally available."[37] Courts may strike pleadings "to purge the court's files and protect the person who is the subject of the allegations."[38] Courts have eliminated allegations that adversely reflect on persons who are not parties.[39] Moreover, these allegations are not germane to any claim,

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questioned." HRE Rule 201(b).

[35] Ethics Commission Rules of Procedure, Rule 1.11(a), available at: http://www.honolulu.gov/rep/site/ethics/rules/Rules_of_Procedure.pdf; see also Frequently Asked Questions available at http://www.honolulu.gov/ethics/faqs.html.

[36] Paragraphs 20–27, 28–36, and 55–63 of the Complaint contain allegations against third parties. Moreover, Exhibit 13, for example, contains the personal LinkedIn Profile of a nonparty. [LinkedIn is a social networking service. See https://en.wikipedia.org/wiki/LinkedIn].

[37] Wright, Miller, Kane & Spencer, *supra*, § 1382.

[38] *Id.*

[39] *Id.*, § 1383.

another reason to strike them.[40]

The Complaint violates the mandate of HRCP Rule 8(e) that allegations be "simple, concise, and direct." Instead, it recites evidentiary material at great length. "[S]ince pleading evidence is not favored under the ... rules because it violates the principle of simplicity of statement, evidentiary allegations may be stricken, particularly if the excessive narrative is lengthy, or if the details are inadmissible or prejudicial."[41]

B. The exhibits should be stricken.

The Complaint does not clearly identify any claims against the City Defendants or any other Defendant showing that any Plaintiff is entitled to relief. On the other hand, nearly a thousand pages of exhibits (including more than 50 newspaper articles) are attached, with exhibit numbers inserted at the end of allegations without any specification as to what portions of the exhibits are being referenced and for what purpose. By incorporating this undifferentiated mass of materials, Plaintiffs may assume they have stated claims, but the rules and case law are contrary.

HRCP "Rule 10(c) authorizes the incorporation of 'any written instrument which is an exhibit' attached to a pleading and makes the material thus incorporated an integral part of that pleading for all purposes.[42] For example, in a complaint alleging breach of contract, it would be appropriate to attach the contract as an exhibit.[43] On the other hand, "exhibits containing largely evidentiary material typically do not qualify as 'written instruments' under Rule 10(c)."[44] Otherwise stated, "lengthy or numerous exhibits containing extraneous or evidentiary material should not be attached to the pleadings."[45] Motions to strike that remove unnecessary clutter serve to expedite the litigation, not delay it.[46]

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[40] See *id.*

[41] *Miller*, 2014 WL 3509760, at *5.

Exhibits are no substitute for a properly pled complaint. If a party "were allowed to make allegations essential to its claims in documents merely attached to its complaint," then the opposing party "might have difficulty understanding the nature of the … claim."[47] A court may consider the fact that it would require significant judicial resources to sift through voluminous exhibits.[48] A plaintiff "may not rely on the Court to wade through the exhibits and piece together his claims. It is Plaintiffs duty to clearly support his claims with sufficient allegations."[49]

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[42] Wright, Miller, Kane & Spencer, *supra*, § 1327.

[43] See *Signature Flight Support Corp. v. Am. Trans Air, Inc.*, No. 8:07 CV 2219 T24 TGW, 2010 WL 883643, at *2 (M.D. Fla. Mar. 5, 2010).

[44] *Thaut v. Hsieh*, No. 215CV0590JAMKJNPS, 2016 WL 3058235, at *10 (E.D. Cal. May 31, 2016), citing *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

[45] *Montgomery v. Buege*, No. CIV. 08-385 WBS KJM, 2009 WL 1034518, at *3 (E.D. Cal. Apr. 16, 2009), quoting Wright, Miller, Kane & Spencer, *supra*, § 1327.

[46] *Miller v. City of Harvey*, No. 13 C 9257, 2014 WL 3509760, at *5 (N.D. Ill. July 15, 2014) (internal quotation marks omitted), citing *Heller Fin., Inc. v. Midwhey Powder Co.,* 883 F.2d 1286, 1294 (7th Cir. 1989).

[47] Wright, Miller, Kane & Spencer, *supra*, § 1327 n.23, quoting *United States v. Citigroup Smith Barney Account No. 600-00338 Held in the Name of Alexander*, No. 06-CV-3730(NGG), 2008 WL 2474642, at *1 (E.D.N.Y. June 19, 2008).

Courts grant motions to strike exhibits when they do not qualify as "written instruments" under Rule 10(c)."[50] A court may strike exhibits "in the nature of evidence submitted to bolster allegations contained in the complaint."[51]

Plaintiffs have appended more than 50 newspaper articles as exhibits.[52] These are not, however, "the type of documentary evidence or 'written instruments' which Rule 10(c) intended to be incorporated into ... the complaint").[53]

Exhibits that only serve to inflame the passions may also be stricken because they are immaterial at the pleading stage.[54] A court even has "discretion to *dismiss* a claim due to a party's excessive attachment of unnecessary exhibits."[55]

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[48] See *Beavers-Gabriel, Inc.*, 2014 WL 4723802, at *2 (D. Haw. Sept. 22, 2014).

[49] *Hernandez v. Smith*, No. 109CV00828OWWGSAPC, 2009 WL 4546722, at *2 (E.D. Cal. Dec. 2, 2009).

[50] *Thaut*, 2016 WL 3058235, at *10 (citations omitted).

[51] *Id.*, quoting *Montgomery v. Buege*, 2009 WL 1034518, at *3 (E.D. Cal. Apr. 16, 2009).

[52] Complaint, Exhibits 4, 12, 18, 19 (multiple), 20, 22 (multiple), 26 (multiple), 34 (multiple), 35, 36 (multiple), 38, 53 (multiple), 54 (multiple), 55 (multiple), 56, 66.

[53] *Thaut*, 2016 WL 3058235, at *10 quoting *Perkins v. Silverstein*, 939 F.2d 463, 467 n.2 (7th Cir. 1991).

[54] *Id.*

Finally, Plaintiffs' attempt to magnify the weight of their exhibits with a "Verification" based on "information and belief" is unavailing. The effect of a verification is to accord it the weight of an affidavit, but statements in an affidavit have no value unless they are based on personal knowledge or some other admissible ground."[56] Such is not the case with Plaintiffs' Verification and exhibits.

CONCLUSION

The Court should grant the City Defendants' motion for a more definite statement and direct Plaintiffs to file a First Amended Complaint that clearly identifies the specific claims against each named Defendant, including allegations regarding the elements of those claims, and such further information as required by the Court.

The Court should also grant the City Defendants' motion to strike allegations from the Complaint, as well as the exhibits.

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[55] *WebQuest.com, Inc. v. Hayward Industries, Inc.*, 2010 WL 4630230, *2 (E.D. Cal. 2010) (italics added), citing *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 415 (9th Cir.1985) (noting that district court did not abuse discretion in dismissing complaint that included over 70 pages of exhibits). Here more than ten times that number are attached to the Complaint.

[56] *Parker v. Learn Skills Corp.*, 530 F. Supp. 2d 661, 670 (D. Del. 2008).

DATED: Honolulu, Hawai'i, July 11, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By ______________________
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HONOLULU ETHICS
COMMISSION and CITY AND
COUNTY OF HONOLULU

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) NOTICE OF HEARING

NOTICE OF HEARING

TO: KEVIN P.H. SUMIDA, ESQ.
ANTHONY K. WONG, ESQ.
LANCE S. AU, ESQ.
STEPHEN K. ROY, ESQ.
Sumida Au & Wong
735 Bishop Street, Suite 411
Honolulu, Hawai'i 96813

Attorneys for Plaintiffs

Notice is hereby given that the foregoing Motion shall come on for Hearing before the Honorable Gary W.B. Chang, Judge of the above-entitled Court, in his courtroom at Circuit Court of the First Circuit, Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813, on August 3, 2016 at 3:00 p.m. or soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i, July 11, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By [signature]
PAUL S. AOKI
ROBERT M. KOHN
Deputies Corporation Counsel

Attorneys for Defendants
HONOLULU ETHICS COMMISSION and CITY AND COUNTY OF HONOLULU

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LOUIS M. KEALOHA, KATHERINE E. KEALOHA, and KRISTINA KEALOHA, a minor child, by her next friend, KATHERINE E. KEALOHA, Plaintiffs, vs. CHARLES W. TOTTO, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; LETHA A.S. DECAIRES, individually and as investigator for the Honolulu Ethics Commission; HONOLULU ETHICS COMMISSION; and THE CITY AND COUNTY OF HONOLULU, Defendants.	CIVIL NO. 16-1-1166-6 GWBC (Non-Motor Vehicle Tort) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that, on July 11, 2016 and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known address as shown below:

KEVIN P.H. SUMIDA, ESQ. *Via U.S. Mail, Postage Prepaid*
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DATED: Honolulu, Hawai'i, July 11, 2016.

DONNA Y. L. LEONG
Corporation Counsel

By ______________________
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HONOLULU ETHICS
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